

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHRISTINE DEMPSEY,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
FEDERAL EXPRESS CORP. &	:	
AVERY W. RUFF,	:	
Defendants.	:	NO. 01-CV-3229

MEMORANDUM & ORDER

J. M. KELLY, J. **NOVEMBER , 2001**

Presently before the Court is Plaintiff Christine Dempsey's ("Dempsey") Motion to Remand. Dempsey initially commenced this action in Court of Common Pleas of Philadelphia County. Defendant, Federal Express Corp. ("Federal Express"), alleged that the parties were diverse and removed the action to this Court. Dempsey now argues that the amount in controversy is insufficient to confer diversity jurisdiction upon this Court.

I. BACKGROUND

In her Complaint, Dempsey alleges that a Federal Express tractor trailer, driven by Defendant Avery Ruff, sideswiped and struck her automobile on Callowhill Street in Philadelphia. Dempsey claims that she suffered: (1) right lateral bulging of the annulus fibrosis at L3-4; (2) lumbar sprain and strain; and (3) contusions and bruises. She claims as damages: (1) past and future pain and suffering; (2) permanent disability and impairment of earning capacity; (3) hedonistic damages; (4) future medical expenses and lost wages; and (5) past wage losses. In her ad damnum clause, Dempsey demands damages in excess of \$50,000.

II. DISCUSSION

A. Standard for Motion to Remand

Generally, a defendant may remove a civil action filed in state court when the federal court could have original jurisdiction over the matter. See 28 U.S.C. § 1441(b) (1994); Boyer v. Snap-On Tools Corp., 913 F.2d 108, 111 (3d Cir. 1990). Upon removal, however, the district court may remand the case to state court if there has been a procedural defect in the removal or if the court lacks subject matter jurisdiction. See 28 U.S.C. § 1447(c) (1994); Township of Whitehall v. Allentown Auto Auction, 966 F. Supp. 385, 386 (E.D. Pa. 1997). Upon a motion to remand, the moving party has the burden of establishing the propriety of removal. See Boyer, 913 F.2d at 111; Orndorff v. Allstate Ins. Co., 896 F. Supp. 173, 174 (M.D. Pa. 1995); Corwin Jeep Sales & Serv. Inc. v. American Motors Sales Corp., 670 F. Supp. 591, 595 (E.D. Pa. 1986). Removal jurisdiction is to be strictly construed, with all doubts as to its propriety to be resolved in favor of remand. See Orndorff, 896 F. Supp. at 175 n.3; Corwin, 670 F. Supp. at 592.

B. Diversity Jurisdiction

Diversity jurisdiction requires that the parties be completely diverse and that the amount in controversy exceed \$75,000, exclusive of interest and costs. See 28 U.S.C. § 1332 (1994). The parties do not dispute that there is complete diversity of citizenship for jurisdictional purposes. Rather, Dempsey contends that her claim does not satisfy the amount in controversy requirement.

As noted above, the moving defendant bears the burden of proving that jurisdiction is proper in federal court. See e.g., Russ v. State Farm Mut. Auto. Ins. Co., 961 F. Supp. 808, 810 (E.D. Pa. 1997). In a case where the Plaintiff claims an amount in excess of an amount less than

the jurisdictional minimum, “[w]hen it appears to a legal certainty that the plaintiff was never entitled to recover the minimum amount set by Section 1332, the removed case must be remanded even if the jurisdictional deficiency becomes evident only after trial.” Meritcare Inc. v. St. Paul Mercury Ins. Co., 166 F.3d 214, 217 (3d Cir. 1999).

C. Amount in Controversy

In determining whether the jurisdictional amount has been satisfied, the court must first look to the complaint. See Angus v. Shiley, Inc., 989 F.2d 142, 145 (3d Cir. 1993) (“The general federal rule is to decide the amount in controversy from the complaint itself.”). If the complaint does not contain a demand for an exact monetary amount, however, the court must make an independent appraisal of the claim and “after a generous reading of the complaint, arrive at the reasonable value of the rights being litigated.” Feldman, 1998 WL 94800, at *4; see Angus, 989 F.2d at 146. Finally, the court may look to the Notice of Removal to assess whether the defendant has met its burden. See Mangano v. Helina, No. CIV. A. 97-1678, 1997 WL 697952, at *5 (E.D. Pa. Nov. 3, 1997).

In the instant case, Dempsey’s complaint raises one count against Federal Express, alleging negligence. For the injuries alleged in the Complaint, Dempsey seeks damages in an “amount in excess of \$50,000.” The Third Circuit has noted that when evaluating claims that do not demand a precise amount of damages, “the amount in controversy is not measured by the low end of an open-ended claim, but rather by a reasonable reading of the value of the rights being litigated.” Angus, 989 F.2d at 1412. The Complaint itself claims that the reasonable value of the rights being litigated exceeds \$50,000. It is further arguable that, if proven, Dempsey’s claims would result in an award in excess of \$75,000 as she claims lost wages, pain and suffering,

damage to her lower back and a permanent physical disability with a reduced earning capacity.

The Court can also look to Federal Express's Notice of Removal in assessing the value of Dempsey's claim. Federal Express argues in its Notice of Removal that while Dempsey's Complaint alleges damages in an amount in excess of \$50,000, Dempsey's claim is really worth more based on plaintiff's counsel's actions. More specifically, Federal Express alleges that because plaintiff's counsel demanded \$125,000 to settle this case, the amount in controversy is in excess of \$75,000. If Dempsey's claim, as she alleges, is truly worth less than \$75,000, there is no valid reason to suggest that the case should settle for \$50,000 more than that amount. As the Mercante court noted, "Plaintiffs are entitled to avoid federal court by seeking less than the jurisdictional amount, but they are not entitled to toy with the federal courts for strategic or tactical reasons. The removal statutes are not to be used, or avoided, for mere tactical reasons." Mercante, 1997 WL 230826, at *4. The Court finds that Dempsey cannot manipulate her ad damnum clause to deny Federal Express's right of removal while retaining the right to recover damages that would satisfy the amount in controversy. See Feldman, 1998 WL 94800, at *5.

III. CONCLUSION

The Court finds that Federal Express has proven to a legal certainty that the amount in controversy in this action exceeds \$75,000. Accordingly, Dempsey's Motion to Remand shall be denied.

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AVERY W. RUFF,	:	
Defendants.	:	NO. 01-CV-3229

ORDER

AND NOW, this day of November, 2001, in consideration of Plaintiff Christine Dempsey's Motion to Remand (Doc. 3) and the response of Defendant Federal Express Corp. thereto, it is ORDERED that the Motion to Remand is DENIED.

BY THE COURT:

JAMES MCGIRR KELLY, J.